

Dale R. Cockrell
Katherine A. Matic
MOORE, COCKRELL,
GOICOECHEA & JOHNSON, P.C.
P.O. Box 7370
Kalispell, MT 59904-0370
Telephone: (406) 751-6000
Facsimile: (406) 756-6522
Email: dcockrell@mcgalaw.com
kmatic@mcgalaw.com

Attorneys for Defendant State of Montana

Roger M. Sullivan
Allan M. McGarvey
John F. Lacey
Dustin A. Leftridge
MCGARVEY, HEBERLING,
SULLIVAN & LACEY, P.C.
345 First Ave. East
Kalispell, MT 59901
Telephone: (406) 752-5566
Facsimile: (406) 752-7124
Email: rsullivan@mcgarveylaw.com
amcgarvey@mcgarveylaw.com
jlacey@mcgarveylaw.com
dleftridge@mcgarveylaw.com

Attorneys for MHS� Plaintiffs

IN THE ASBESTOS CLAIMS COURT OF THE STATE OF MONTANA

IN RE ASBESTOS LITIGATION,

Consolidated Cases.

Cause No. AC 17-0694

JOINT MOTION AND PETITION FOR ORDER APPROVING SETTLEMENT AND OF DISMISSAL WITH PREJUDICE

Applicable to:

Barnes, et al. v. State of Montana, et al.,
Lincoln County Cause No. DV-16-111

MOTION

Tracie Barnes (“Barnes”) and the State of Montana¹ (“State”), by and through their counsel of record, hereby submit this *Joint Motion and Petition for Order Approving Settlement and of Dismissal with Prejudice* (hereinafter “*Petition/Dismissal Motion*”). In this

¹ The State of Montana includes any and all departments, agencies, divisions, and employees of the State of Montana.

Petition/Dismissal Motion, the parties jointly move and petition the Court for an order approving a proposed settlement between Barnes and the State. Additionally, the parties move and petition the Court for an order of dismissal with prejudice of Barnes' case and claims against the State.

SUPPORTING STATEMENT

Beginning in the late 1960's and increasingly into the 1990's, Zonolite Mining Company/W.R. Grace (collectively "Grace") employees and former employees and their family members made claims against Grace for asbestos-related diseases. Many claims settled and some cases were tried to verdict.

On April 2, 2001, Grace filed a chapter 11 bankruptcy petition. Subsequent to the Grace bankruptcy filing, Barnes sued the State. Barnes alleges injury from asbestos-related disease allegedly caused by the State among other defendants. In June 2018, Barnes and the State engaged in mediation in an effort to resolve his lawsuit and claims against the State. Representatives of the State of Montana's insurer, National Indemnity Company ("NIC"), attended the mediation.

As a result of the mediation, Barnes and the State entered a proposed settlement ("Barnes/State Tentative Settlement") to resolve Barnes' lawsuit and claims against the State for a total payment of \$250,000 to a Qualified Settlement Fund Trust. The payment would be made within thirty (30) days of court approval in exchange for the agreed upon General Release from Barnes, subject to the State not being precluded by court order from paying the \$250,000 to Barnes. A copy of the General Release from Barnes is attached as Exhibit A. In addition, Barnes' lawsuit and claims against the State shall be subject to the "State Round 3 MOU Indirect Claims Exemplar," a copy of which is attached as Exhibit B. NIC made no contribution to the Barnes/State Tentative Settlement.

Concurrent with the filing of this *Petition/Dismissal Motion*, counsel for the MHSL Libby Mine Claimants, including Barnes, is filing a separate petition for an order approving establishment of the MHSL Libby Mine Claimants QSF for purposes of receipt and distribution of settlement proceeds, including proceeds of the proposed settlement between Barnes and the State. The MHSL Libby Mine Claimants QSF will be subject to the jurisdiction of this Court.

Litigation against the State concerning alleged asbestos-related injury and damages arising out of the State's alleged actions/inactions at the W.R. Grace operations in and near Libby, Montana, has spanned nearly 18 years. The facts and legal theories involving that litigation are extraordinarily complex. Barnes' lawsuit and claims against the State involve numerous disputed factual questions and unresolved legal questions. Given the complexity of the litigation, numerous disputed factual questions, unresolved legal issues, and risks of continued litigation, the parties believe the proposed settlement is reasonable.

Mont. Code Ann. § 2-9-303(1) provides in relevant part that: "A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge shall approve the compromise settlement." Pursuant to Mont. Code Ann. § 2-9-303(1) and the November 28, 2017, *Order Establishing The Asbestos Claims Court and Consolidating Cases* this Court has jurisdiction to approve the Barnes/State Tentative settlement and enter an order dismissing with prejudice Barnes' lawsuit and claims against the State.

For the foregoing reasons, the parties respectfully request the Court enter an Order:

1. approving the proposed settlement between Barnes and the State; and
2. dismissing with prejudice Barnes' lawsuit and claims against the State.

A proposed Order is attached for the Court's consideration.

DATED this 3rd day of January, 2019.

MCGARVEY, HEBERLING,
SULLIVAN & LACEY, P.C.

By: /s/ Roger M. Sullivan
Roger M. Sullivan
Allan M. McGarvey
John F. Lacey
Dustin A. Leftridge
Kalispell, MT 59901

Attorneys for Plaintiff Tracie Barnes

MOORE, COCKRELL,
GOICOECHEA & JOHNSON, P.C.

By: /s/ Dale R. Cockrell
Dale R. Cockrell
Katherine A. Matic
P.O. Box 7370
Kalispell, MT 59904-0370
Telephone: (406) 751-6000
Facsimile: (406) 756-6522
Email: dcockrell@mcgalaw.com
kmatic@mcgalaw.com

Attorneys for Defendant State of Montana

CERTIFICATE OF SERVICE

I, Dale R. Cockrell, hereby certify that I have served true and accurate copies of the foregoing Motion - Other to the following on 01-04-2019:

Amy Poehling Eddy (Attorney)
920 South Main
Kalispell MT 59901
Representing: Amy Eddy
Service Method: eService

Roger M. Sullivan (Attorney)
345 1st Avenue E
MT
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Allan M. McGarvey (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Jon L. Heberling (Attorney)
345 First Ave E
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

John F. Lacey (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Ethan Aubrey Welder (Attorney)
345 1st Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Dustin Alan Richard Leftridge (Attorney)
345 First Avenue East
Montana
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Jeffrey R. Kuchel (Attorney)
305 South 4th Street East
Suite 100
Missoula MT 59801
Representing: Accel Performance Group LLC, et al, MW Customs Papers, LLC
Service Method: eService

Danielle A.R. Coffman (Attorney)
1667 Whitefish Stage Rd
Kalispell MT 59901
Representing: Accel Performance Group LLC, et al, MW Customs Papers, LLC
Service Method: eService

Gary M. Zadick (Attorney)
P.O. Box 1746
#2 Railroad Square, Suite B
Great Falls MT 59403
Representing: Honeywell International
Service Method: eService

Gerry P. Fagan (Attorney)
27 North 27th Street, Suite 1900
P O Box 2559
Billings MT 59103-2559
Representing: CNH Industrial America LLC
Service Method: eService

G. Patrick HagEstad (Attorney)
PO Box 4947
Missoula MT 59806
Representing: United Conveyor Corporation, Riley Stoker Corporation et al
Service Method: eService

Jennifer Marie Studebaker (Attorney)
210 East Capitol Street
Suite 2200
Jackson MS 39201
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, International Paper Co.
Service Method: eService

Joshua Alexander Leggett (Attorney)

210 East Capitol Street, Suite 2200
Jackson MS 39201-2375
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, International Paper Co.
Service Method: eService

Vernon M. McFarland (Attorney)
200 South Lamar Street, Suite 100
Jackson MS 39201-4099
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, International Paper Co.
Service Method: eService

Jean Elizabeth Faure (Attorney)
P.O. Box 2466
1314 Central Avenue
Great Falls MT 59403
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, Borg Warner Morse Tec LLC, International Paper Co.
Service Method: eService

Jason Trinity Holden (Attorney)
1314 CENTRAL AVE
P.O. BOX 2466
Montana
GREAT FALLS MT 59403
Representing: Goulds Pump LLC, Grinnell Corporation, ITT LLC, et al, Borg Warner Morse Tec LLC, International Paper Co.
Service Method: eService

Chad E. Adams (Attorney)
PO Box 1697
Helena MT 59624
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company, Fischbach and Moore, Inc. et al, American Honda Motor Co., Inc., Harder Mechanical Contractors, Nissan North American Inc.
Service Method: eService

Katie Rose Ranta (Attorney)
Faure Holden, Attorneys at Law, P.C.
1314 Central Avenue
P.O. Box 2466
GREAT FALLS MT 59403
Representing: Borg Warner Morse Tec LLC
Service Method: eService

Stephen Dolan Bell (Attorney)
Dorsey & Whitney LLP
125 Bank Street
Suite 600
Missoula MT 59802

Representing: Ford Motor Company
Service Method: eService

Dan R. Larsen (Attorney)
Dorsey & Whitney LLP
111 South Main
Suite 2100
Salt Lake City UT 84111
Representing: Ford Motor Company
Service Method: eService

Kelly Gallinger (Attorney)
315 North 24th Street
Billings MT 59101
Representing: Maryland Casualty Corporation
Service Method: eService

Charles J. Seifert (Attorney)
P.O. Box 598
Helena MT 59624
Representing: Ford Motor Company, Maryland Casualty Corporation
Service Method: eService

Robert J. Phillips (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: BNSF Railway Company
Service Method: eService

Emma Laughlin Mediak (Attorney)
Garlington, Lohn & Robinson, PLLP
P.O. Box 7909
Missoula MT 59807
Representing: BNSF Railway Company
Service Method: eService

Daniel Jordan Auerbach (Attorney)
201 West Railroad St., Suite 300
Missoula MT 59802
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company
Service Method: eService

Leo Sean Ward (Attorney)
PO Box 1697
Helena MT 59624
Representing: Weir Valves & Controls USA, Cyprus Amex Minerals Company, Fischbach and Moore, Inc. et al, American Honda Motor Co., Inc., Harder Mechanical Contractors, Nissan North American Inc.

Service Method: eService

Robert B. Pfennigs (Attorney)

P.O. Box 2269

Great Falls MT 59403

Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.

Service Method: eService

Rick A. Regh (Attorney)

P.O. Box 2269

GREAT FALLS MT 59403

Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.

Service Method: eService

Mark Trevor Wilson (Attorney)

300 Central Ave.

7th Floor

P.O. Box 2269

Great Falls MT 59403

Representing: Stimson Lumber Company, Zurn Industries, Inc., Mazda Motor of America, Inc.

Service Method: eService

Robert M. Murdo (Attorney)

203 North Ewing

Helena MT 59601

Representing: Mine Safety Appliance Company LLC

Service Method: eService

Murry Warhank (Attorney)

203 North Ewing Street

Helena MT 59601

Representing: Mine Safety Appliance Company LLC

Service Method: eService

Ben A. Snipes (Attorney)

Kovacich Snipes, PC

P.O. Box 2325

Great Falls MT 59403

Representing: Backen et al, Sue Kukus, et al

Service Method: eService

Mark M. Kovacich (Attorney)

Kovacich Snipes, PC

P.O. Box 2325

Great Falls MT 59403

Representing: Backen et al, Sue Kukus, et al

Service Method: eService

Ross Thomas Johnson (Attorney)

P.O. Box 2325
Great Falls MT 59403
Representing: Backen et al, Sue Kukus, et al
Service Method: eService

Randy J. Cox (Attorney)
P. O. Box 9199
Missoula MT 59807
Representing: A.W. Chesterson Company
Service Method: eService

Zachary Aaron Franz (Attorney)
201 W. Main St.
Suite 300
Missoula MT 59802
Representing: A.W. Chesterson Company
Service Method: eService

M. Covey Morris (Attorney)
Tabor Center
1200 Seventeenth St., Ste. 1900
Denver CO 80202
Representing: FMC Corporation
Service Method: eService

Robert J. Sullivan (Attorney)
PO Box 9199
Missoula MT 59807
Representing: Ingersoll-Rand, Co.
Service Method: eService

Vaughn A. Crawford (Attorney)
SNELL & WILMER, L.L.P.
400 East Van Buren
Suite 1900
Phoenix AZ 85004
Representing: The Proctor & Gamble Company et al
Service Method: eService

Tracy H. Fowler (Attorney)
15 West South Temple
Suite 1200
South Jordan UT 84101
Representing: The Proctor & Gamble Company et al
Service Method: eService

Martin S. King (Attorney)
321 West Broadway, Suite 300
P.O. Box 4747

Missoula MT 59806
Representing: Foster Wheeler Energy Services, Inc.
Service Method: eService

Maxon R. Davis (Attorney)
P.O. Box 2103
Great Falls MT 59403
Representing: Continental Casualty Company
Service Method: eService

Tom L. Lewis (Attorney)
2715 Park Garden Lane
Great Falls MT 59404
Representing: Harold N. Samples
Service Method: eService

Keith Edward Ekstrom (Attorney)
601 Carlson Parkway #995
Minnetonka MN 55305
Representing: Brent Wetsch
Service Method: eService

William Rossbach (Attorney)
401 N. Washington
P. O. Box 8988
Missoula MT 59807
Representing: Michael Letasky
Service Method: eService

Kennedy C. Ramos (Attorney)
1717 Pennsylvania Avenue NW
1200
wash DC 20006
Representing: Maryland Casualty Corporation
Service Method: eService

Edward J. Longosz (Attorney)
1717 Pennsylvania Avenue NW
Suite 1200
Washington DC 20006
Representing: Maryland Casualty Corporation
Service Method: eService

Chad M. Knight (Attorney)
929 Pearl Street
Ste. 350
Boulder CO 80302
Representing: BNSF Railway Company
Service Method: eService

Anthony Michael Nicastro (Attorney)
401 North 31st Street
Suite 770
Billings MT 59101
Representing: BNSF Railway Company
Service Method: eService

Nadia Hafeez Patrick (Attorney)
929 Pearl Street Suite 350
Boulder CO 80302
Representing: BNSF Railway Company
Service Method: eService

Kevin A. Twidwell (Attorney)
1911 South Higgins Ave
PO Box 9312
Missoula MT 59807
Representing: Libby School District #4
Service Method: eService

Jennifer Jeresek Mariman (Attorney)
345 First Avenue East
Kalispell MT 59901
Representing: Adams, et al
Service Method: eService

Stephanie A. Hollar (Attorney)
P.O. Box 2269
Great Falls MT 59403
Representing: Stimson Lumber Company
Service Method: eService

James E. Roberts (Attorney)
283 West Front Street
Suite 203
Missoula MT 59802
Representing: BNSF Railway Company
Service Method: eService

Jacy Suenram (Attorney)
P.O. Box 2325
Great Falls MT 59403
Representing: Backen et al
Service Method: eService

Michael Crill (Other)
PO Box 145
Rimrock AZ 86335

Service Method: Conventional

Michael D. Plachy (Attorney)

1200 17th Street

Denver CO 80202

Representing: Honeywell International

Service Method: Conventional

Conor A. Flanigan (Attorney)

1200 17th Street

Denver CO 80202

Representing: Honeywell International

Service Method: Conventional

Fredric A. Bremseth (Attorney)

601 Carlson Parkway, Suite 995

Minnetonka MN 55305-5232

Representing: Brent Wetsch

Service Method: Conventional

Walter G. Watkins (Attorney)

210 E. Capitol Street, Ste. 2200

Jackson MS 39201

Representing: International Paper Co.

Service Method: Conventional

Jason Eric Pepe (Attorney)

519 Southwest Boulevard

Kansas City MO 64108

Representing: BNSF Railway Company

Service Method: Conventional

Peter A. Moir (Attorney)

701 Poydras Street, Suite 2200

New Orleans LA 70139-6001

Representing: International Paper Co.

Service Method: Conventional

Mark A. Johnston (Attorney)

1717 Pennsylvania Ave. NW, 12th Floor

Washington DC 20006

Representing: Maryland Casualty Corporation

Service Method: Conventional

Erik H Nelson (Attorney)

519 Southwest Boulevard

Kansas City MO 64108

Representing: BNSF Railway Company

Service Method: Conventional

Michael E. Wise (Attorney)
519 Southwest Boulevard
Kansas City MO 64108
Representing: BNSF Railway Company
Service Method: Conventional

Electronically signed by Breanne Pritchett on behalf of Dale R. Cockrell
Dated: 01-04-2019